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9 **IN THE SUPERIOR COURT OF ARIZONA**

10 **IN THE COUNTY OF YAVAPAI**

11 Ryan Kwitkin, an individual,
12
13 Plaintiff,

Case No.:

14 **COMPLAINT**

15 vs.

16 **(Jury Trial Demanded)**

17 City of Sedona, a political subdivision of
18 the State of Arizona; Stephanie Foley, in
19 her official and personal capacities; Karen
20 Osburn, in her official and personal
21 capacities; Anette Spickard, in her official
22 and personal capacities; Russ Martin, in
23 his official and personal capacities,

24 Defendants.

25 For his Complaint against City of Sedona Police Department (the “City”), Stephanie
Foley, Karen Osburn, Anette Spickard, and Russ Martin (collectively the “Defendants”),
Plaintiff Ryan Kwitkin alleges as follows:

Introduction

The facts underlying Mr. Kwitkin’s claims involve corruption, nepotism,
incompetence, fear, and retaliation. This was all facilitated by the Chief of Police. The
storylines involve soap opera-like cliques that are only interested in self-preservation. Self-
preservation from the Chief’s ire and well-earned reputation of getting even when concerns
are raised. Where avoidance and ignoring problems is a pivotal coping skill to maintain
good relations with the Chief. Where “rocking the boat”-even when that means protecting

1 public safety and taxpayer funds-was to be avoided at all costs if an employee was to
2 survive.

3 The inevitable plot twist occurs when three direct reports of the Chief-one being Mr.
4 Kwitkin-are brave enough to stand up for what is right. They do this even knowing what
5 the Chief is capable of. Because everyone should be held accountable-especially those that
6 flatly reject it. And because they trusted the City to protect them in exercising their rights
7 and raising matters of public concern.

8 In response to their complaints, an “investigation” was conducted. Where anyone
9 with concerns were expected to talk about them while the Chief was on patrol. Not on a
10 paid leave or temporary reassignment, but literally on patrol, on duty, and on the lookout for
11 those that would dare sand up against her.

12 The City summarily dismissed all complaints against the Chief. But then, took it a
13 step further. Within hours, the City presented Mr. Kwitkin with a Notice of Investigation for
14 alleged misconduct (some of which included “swearing”), and placed him on leave.

15 The investigation that followed was anything but an investigation. As they say, the
16 cover-up is always worse than the crime. That is the case here. The City’s own
17 orchestrated and concerted efforts to cover up concerns raised about the Chief for violations
18 of Arizona law were extensive and sloppy. This Complaint centers on the retaliation against
19 those that stood up for what is right and lawful.

18 **Background Allegations and Jurisdiction**

19 1. At all times relevant to this Complaint, Plaintiff resided in and was a citizen
20 of Yavapai County, Arizona.

21 2. At all times relevant to this Complaint, Plaintiff was employed by the City of
22 Sedona as its Deputy Chief of Police.

23 3. The City is a charter city, a political subdivision of the State of Arizona and is
24 located in Yavapai County.

25 4. At all times relevant to this Complaint, the City acts through its employees,
agents, and independent contractors.

1 5. The City of Sedona Police Department is a department or division of the City
2 that acts with the City's authority.

3 6. At all times relevant to this Complaint, Defendant Stephanie Foley served as
4 the Chief of Police for the City.

5 7. At all times relevant to this Complaint, Defendant Foley resided in and was a
6 citizen of Yavapai County, Arizona.

7 8. At all times relevant to this Complaint, Defendant Foley served as Plaintiff's
8 supervisor.

9 9. In that role, Defendant Foley was given authority to oversee and direct
10 Plaintiff to take or not take certain actions.

11 10. Defendant Foley exercised that authority with respect to Plaintiff.

12 11. At all times relevant to this Complaint until her departure, Defendant Osburn
13 served as the City Manager.

14 12. In that role, Defendant Osburn was the highest-ranking management official
15 of the City during her tenure.

16 13. In that role, Defendant Osburn oversaw the management and administration
17 of all City departments.

18 14. Defendant Osburn exercised that management authority with respect to
19 Plaintiff and the Police Department.

20 15. At all times relevant to this Complaint from the time of her hire, Defendant
21 Anette Spickard served as the City Manager.

22 16. In that role, Defendant Spickard was the highest-ranking management official
23 of the City during her tenure.

24 17. In that role, Defendant Spickard oversaw the management and administration
25 of all City departments.

 18. Defendant Spickard exercised that management authority with respect to
Plaintiff and the Police Department.

1 19. At all times relevant to this Complaint, Defendant Martin served as the
2 Human Resources Director for the City.

3 20. In that role, Defendant Martin was the highest-ranking Human Resources
4 official in the City and was given authority over the investigation and implementation of
5 policies and practices concerning personnel matters.

6 21. Defendant Martin exercised that authority with respect to Plaintiff.

7 22. Plaintiff was an employee of the City pursuant to 42 U.S.C. § 2000e-f, A.R.S.
§ 23-1501, and other applicable federal and state laws.

8 23. The City is an employer pursuant to 42 U.S.C. § 2000, A.R.S. § 23-1501, and
9 other applicable federal and state laws.

10 24. The acts and omissions forming the basis of this Complaint occurred in
11 Yavapai County, Arizona.

12 25. Jurisdiction and venue are appropriate in this Court.

13 **The Chief Revealed: Shots Fired**

14 26. Plaintiff started service as the Deputy Chief for the City on March 20, 2023.

15 27. Shortly after starting his employ, Plaintiff learned that the Chief had
16 expectations that required complete loyalty.

17 28. Plaintiff observed that the Chief did not tolerate employees expressing
18 concern or expressing a different opinion than the Chief's.

19 29. Plaintiff observed the Chief retaliate against those that raised concerns.

20 30. Plaintiff observed that employees were fearful to raise concerns for fear of
21 retaliation.

22 31. This type of silence, Plaintiff believed, created dangerous situations for the
23 employees, law enforcement, and the City's people.

24 32. Plaintiff believed that this environment, created by the Chief, chilled
25 expressions of matters of public concern.

33. Plaintiff, however, raised matters of public concern to the Chief and other
Defendants.

1 34. Plaintiff also raised potential violations of Arizona law to the Chief and other
2 Defendants.

3 35. As a result, Defendant Foley utilized her position to take adverse action
4 against Plaintiff.

5 36. For example, because of his protected activity, Defendant Foley extended
6 Plaintiff's probationary period – depriving him of certain Due Process rights.

7 37. Because of Plaintiff's protected activity, Defendant Foley ultimately
8 terminated Plaintiff.

9 38. Defendants were in positions to take action to stop these adverse actions and
10 Constitutional deprivations.

11 39. Defendants failed to take such action.

12 **Public Concern: Unarmed Citizen Volunteers Driving Prisoners Around Town**

13 40. Plaintiff went to the Chief with concerns about what the City's police
14 volunteers were allowed to do.

15 41. Police volunteers were utilized to transport prisoners.

16 42. The volunteers were allowed to transport what Chief Foley labeled "non-
17 violent" prisoners to county jail, after an officer made the arrest.

18 43. These transports were carried out by unarmed, untrained, police volunteers.

19 44. Plaintiff discussed with the Chief that he had never met a prisoner that said,
20 "hey, don't worry I am not going to be violent," or "I am going to fight you once these
21 handcuffs come off."

22 45. The Chief responded with "we are a small agency, and we cannot always
23 have the staffing to transport our prisoners."

24 46. Plaintiff further attempted to address his concerns with having volunteers
25 driving marked cars that say "police" on them.

 47. Chief Foley's response was dismissive and angry.

1 48. Though not within the scope of his responsibilities, Plaintiff raised this
2 concern because he was fearful for public safety and the exposure that the practice caused
3 the City and its taxpayers.

4 **Public Concern: Safety Issues Regarding Jail Locks**

5 49. In early January 2024, after reviewing a PD booking video, Plaintiff learned
6 that an officer left the jail door key in the cell door and a prisoner was about to reach
7 through the door food slot and unlock the cell door when the officer stepped out of the
8 booking area.

9 50. The prisoner was freely walking around the booking area and had total access
10 to their property.

11 51. When the officer came back into the booking area, he was surprised and
12 escorted the prisoner back to the cell.

13 52. Plaintiff went to Chief Foley to discuss this with her and mentioned an
14 alternative practice to protect the officers and the public.

15 53. Chief Foley dismissed the idea and said, “we just leave it [the key] in the top
16 drawer.”

17 **Public Concern: Body Cam Shows Officer Breaking Into Evidence Room**

18 54. In February 2024, Plaintiff raised a concern about the security of the evidence
19 room.

20 55. Plaintiff observed an officer’s body cam footage where the officer was
21 utilizing a telescopic device to attempt to remove an evidence locker key that was already
22 submitted to evidence.

23 56. Plaintiff’s concerns related to the overall chain of custody, the lack of security
24 of the evidence, and the training inadequacies.

25 57. All of these concerns related to the safety of the public, the ability to obtain
convictions given these inadequacies, and expenditure of taxpayer funds.

 58. Plaintiff raised these concerns with Defendant Foley.

1 59. Plaintiff suggested to Defendant Foley that an internal investigation or audit
2 of the evidence be conducted because he was concerned about the validity/authenticity of
3 that evidence.

4 60. Plaintiff reported that he was concerned that a failure to take remedial action
5 might violate state laws and/or the state and U.S. Constitutions.

6 61. Defendant Foley became angry with Plaintiff, and retaliated against him.

7 62. Plaintiff raised several other similar concerns that were outside of the scope of
8 his responsibilities, but directly impacted the public.

9 63. Several of those concerns were expressed via email and in person with
10 Defendant Foley.

11 64. In addition to the matters of public concern, Plaintiff raised matters that he
12 believed were violations of Arizona law and both the state and U.S. Constitutions.

13 65. Defendant Foley dismissed each of Plaintiff's concerns.

14 66. Defendant Foley retaliated against Plaintiff for raising the concerns.

15 67. Plaintiff had conversations with other employees that shared similar concerns
16 but confided that they were fearful to raise them.

17 68. Employees confided in Plaintiff that, if they raised any complaints to or about
18 Chief Foley, they feared losing their jobs or would be denied promotional opportunities.

19 69. As such, Plaintiff decided to raise his concerns beyond Chief Foley.

20 **Mr. Kwitkin Reports Chief Foley: The Beginning of the End**

21 70. Because the Chief was unreceptive to the concerns he raised, Plaintiff
22 believed he had a personal obligation to the City and a right as a citizen to speak out.

23 71. On March 14, 2024, Plaintiff met with Defendant Martin to raise these
24 matters of public concern and to file a formal complaint against Chief Foley.

25 72. While sitting in Defendant Martin's office, Sergeant Leon entered, and
decided she too was ready to file a complaint.

 73. While both individuals were sitting with Defendant Martin, Sherri O'Conner,
the Chief's Executive Assistant, walked in and said she wanted to file a complaint as well.

1 74. All three individuals discussed their concerns regarding Chief Foley and
2 several of the practices above.

3 75. Defendant Martin listened.

4 76. At the time, Defendant Martin expressed great concern, and the trio explained
5 that there were several other people within the police department that may want to come
6 forward.

7 77. Defendant Martin expressed that he had heard enough to initiate a complaint.

8 78. During the conversation, Ms. O’Conner became visibly shaken.

9 79. She reported her fear of the Chief, and said that she needed to leave before the
10 Chief came to look for her.

11 80. Defendant Martin made a comment about Ms. O’Conner’s demeanor.

12 81. Defendant Martin further asked the trio to “tell anyone else that they do not
13 need to come to HR to express their concerns.”

14 82. Instead, Defendant Martin remarked that “there will be an investigator
15 assigned to speak with anyone else who wants to be heard.”

16 83. After several hours of voicing their concerns, Defendant Martin told Plaintiff
17 that he was going to call the City Manager and update her.

18 84. Later that evening, Plaintiff contacted Defendant Martin to follow up, and
19 inquire about what processes the City was going to implement to protect the individuals
20 who filed their complaints from future harassment or retaliation.

21 85. Though not within his scope of responsibility, Plaintiff was concerned about
22 retaliation against those that raised concerns.

23 86. Defendant Martin told Plaintiff that he recommended to Defendant Osburn
24 that she put Defendant Foley on paid administrative leave to ensure a fair investigation and
25 protect those from potential retaliation.

 87. Defendant Osburn declined to take that action recommended by Defendant
Martin.

1 88. In that same conversation, Defendant Martin informed Plaintiff that he was
2 going to talk with the HR company and see what they suggested.

3 89. Ultimately, Defendant Osburn left Defendant Foley in her position to
4 continue to directly supervise two of the individuals who filed complaint against her.

5 90. Defendant Osburn left Defendant Foley in her position during the
6 investigation, which was conducted within the same building.

7 91. Upon taking over the City Manager’s position, Defendant Spickard left
8 Defendant Foley in her position during the investigation, which was conducted within the
9 same building.

10 92. Defendant Spickard took no actions to safeguard witnesses, ensure that the
11 investigation was fair, nor that complainants or witnesses were not retaliated against.

12 93. Upon information and belief, employees were concerned about participating
13 in the investigation.

14 94. Several employees, however, did participate.

15 95. Defendant Foley retaliated against those employees, including Plaintiff.

16 96. The other Defendants facilitated the retaliation.

17 **The “Investigation” into Chief Foley**

18 97. Plaintiff hoped that the investigation would be full and fair and take into
19 consideration the information he and others were providing, the information gained during
20 the investigation, and the past reports and allegations with Chief Foley long before his
21 arrival.

22 98. Upon information and belief, this did not occur.

23 99. During interviews with the hired HR investigator, Barbara Basel, Plaintiff
24 provided the names of at least 12 people, most current and some former employees, who
25 would corroborate and detail stories of the mistreatment and culture of a fear and hostility at
the City PD.

 100. As the investigation progressed, several individuals approached Plaintiff and
asked how they could contact the investigator.

1 101. Instead of sharing her information, Plaintiff reached out to her and asked for
2 direction on how people who wanted to speak with her could make contact.

3 102. Ms. Basel continuously pushed Plaintiff off and would instead refer him to
4 Defendant Martin.

5 103. Plaintiff never felt heard by Ms. Basel.

6 104. Upon conclusion of the investigation, numerous people who had pertinent
7 information about the issue within the department were never even contacted.

8 105. Within days of wrapping up the investigation regarding Defendant Foley,
9 Plaintiff was served with a Notice of Investigation and Notice of Administrative leave.

10 106. The reaction was denial, deflection, and then discipline.

11 107. After raising issues with Defendant Foley, Plaintiff's probationary period was
12 extended.

13 108. It was extended by Defendant Foley to limit Plaintiff's Due Process rights.

14 109. The other Defendants could have prevented Defendant Foley's actions, but
15 did not.

16 110. Defendants facilitated the extension of Plaintiff's probationary period, and
17 thus the deprivation of Due Process rights.

18 111. Prior to raising concerns, Plaintiff had no performance issues.

19 112. In fact, Plaintiff's written evaluation – prior to raising concerns – indicated no
20 concerns.

21 113. In retaliation for raising his concerns, Defendant Foley terminated Plaintiff.

22 114. The other Defendants could have prevented Defendant Foley's actions, but
23 did not.

24 115. Defendants facilitated and/or ratified Defendant Foley's unlawful conduct.

25 116. Defendant Foley had retaliated against, and terminated, employees that raised
matters of public concern.

 117. The other Defendants knew of Defendant Foley's prior retaliatory actions
against former employees for engaging in protected activity.

1 118. Despite this, Defendants failed to take action.

2 119. Because of this misconduct, Plaintiff has suffered, and will continue to suffer
3 damages.

4 120. Defendants' conduct caused Plaintiff to endure significant health issues,
5 needing medical attention.

6 **LEGAL CLAIMS**

7 **Count One: Constitutional Violations § 1983 (First and Fourteenth Amendments)**

8 **(Against All Defendants)**

9 121. Plaintiff reincorporates allegations in paragraphs 1-120 as if fully set forth
10 here.

11 122. At all relevant times, Defendant Foley was acting under color of State law.

12 123. At all relevant times, Defendant Martin was acting under color of State law.

13 124. At all relevant times, Defendant Osburn was acting under color of State law.

14 125. At all relevant times, Defendant Spickard was acting under color of State law.

15 126. In her role, Defendant Foley had the authority to direct and oversee, and did
16 direct and oversee, Plaintiff.

17 127. In her role, Defendant Foley was the highest-ranking official of the City's PD.

18 128. In his role, Defendant Martin was the highest-ranking Human Resources
19 official for the City.

20 129. In her role, Defendant Osburn was the highest-ranking management official
21 for the City during her tenure.

22 130. In her role, Defendant Spickard was the highest-ranking management official
23 for the City during her tenure.

24 131. In their respective roles, all Defendants were charged with ensuring the
25 workplace was free from adverse actions for the proper exercise of speech, the violation of
which infringes upon an employee's First Amendment rights under the United States
Constitution.

1 132. In their respective roles, all Defendants were charged with ensuring the
2 workplace was free from adverse action that deprives any individual of his rights to Due
3 Process as guaranteed by the Fourteenth Amendment of the United States Constitution.

4 133. Plaintiff's complaints concerned public safety, the misappropriation of funds,
5 violation of certain state laws, and violations of the Arizona and U.S. Constitutions.

6 134. Plaintiff's complaints raised matters of public concern.

7 135. Plaintiff had the right to voice matters of public concern, as protected by his
8 First Amendment rights under the United States Constitution.

9 136. As a public employee, Plaintiff was entitled to certain Due Process rights.

10 137. Defendants deprived Plaintiff of those Due Process rights because of his
11 protected activity.

12 138. All the aforementioned individuals acted in accordance with the longstanding
13 policy, practice, or custom to not tolerate complaints made against the PD and taking
14 adverse action against those that make such complaints.

15 139. The individual Defendants acted, either by commission or omission, in not
16 giving credence to complaints made against the PD, amounting to a policy, custom, or
17 practice.

18 140. This policy, custom, or practice was well-known within the City, and by the
19 individual Defendants.

20 141. Plaintiff suffered harm as a result of each individual's compliance with the
21 policy, practice, or custom.

22 142. All of the Defendants used their respective positions given to them by the
23 government while acting under the color of State law.

24 143. The City, and the individuals acting in their official capacities, are liable for
25 this misconduct.

 144. All of the Defendants used their respective positions given to them by the
government while acting under the color of State law.

1 145. All of Plaintiff's rights, as articulated above, are clearly established and
2 recognized.

3 146. Plaintiff will be entitled to damages against the City and its decision makers
4 including punitive damages against the individual defendants in their personal capacities.

5 **Count Two: Arizona Employment Protection Act "AEPA" (against the City only)**

6 147. Plaintiff reincorporates allegations in paragraphs 1-146 as if fully set forth
7 here.

8 148. Plaintiff raised concerns about the City's systematic violations of State laws
9 and the Arizona Constitution.

10 149. Plaintiff reported his good faith belief that his employer's practices violated
11 certain State laws and the Arizona Constitution.

12 150. Plaintiff brought those concerns to those in positions to investigate, remedy,
13 and prevent any future violations of law.

14 151. Defendants Foley, Osburn, and Martin were in positions to investigate,
15 remedy, and prevent any future violations of law.

16 152. Plaintiff was terminated for making these reports.

17 153. Plaintiff's termination violates public policy as prohibited by A.R.S. § 23-
18 1501.

19 154. Plaintiff has suffered damages and is entitled to compensation for those
20 damages.

21 **Conclusion**

22 **THEREFORE**, Plaintiff respectfully requests the following relief:

- 23 A. A judgment in his favor;
- 24 B. An award of back pay, reinstatement, front pay (if reinstatement is not feasible),
25 compensatory, and punitive damages for the Individual Defendants' violations of
his civil rights pursuant to § 1983;
- C. An award of back pay, front pay, and compensatory damages for the City's
violations of the AEPA;

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D. Reasonable attorneys' fees and costs pursuant to A.R.S. § 12-341 and § 1983; and
E. All other appropriate equitable relief.

DATED this 6th day of November, 2024.

The Foster Group, PLLC

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